

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

5
FREIGHTLINER CUSTOM CHASSIS
CORPORATION

and

Cases 11-CA-20842
11-CA-20877

10
INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT
15 WORKERS OF AMERICA, UAW

Jasper C. Brown, Esq., for the Government¹
John J. Doyle, Jr., Esq., and
Mitchell Cogen, Esq., for the Company²

20
DECISION

Statement of the Case

25 WILLIAM N. CATES, Administrative Law Judge. These cases involve an
interference with employee rights and a wrongful discharge. The cases were tried before
me on January 23 and 24, 2006³, in Gaffney, South Carolina. The cases originate from
charges filed by International Union, United Automobile, Aerospace & Agricultural
Implement Workers of America, UAW (Union). The charge in case 11-CA-20842 was
30 filed on August 9, and amended on October 31. The charge in case 11-CA-220877 was
filed on September 14, and amended on October 31. The prosecution of these cases was
formalized on October 31 when the Regional Director for Region 11 of the National
Labor Relations Board (Board), acting in the name of the Board's General Counsel,
issued an Order Consolidating Cases Consolidated Complaint and Notice of Hearing
35 (complaint) against Freightliner Custom Chassis Corporation (Company).

Specifically it is alleged that from on or about May through July the Company
through the actions of its agents and supervisors violated Section 8(a)(1) of the National
Labor Relations Act, as amended, (Act) by promulgating and enforcing an unlawful no-
40 talking rule against pro-Union employees, disparately enforcing its no solicitation/ no
distribution rule against pro-Union employees, interfering with lawful union hand billing
outside its facility entrance, surveillance of union activity by recording the identity of

¹ I shall refer to Counsel for General Counsel as Government Counsel or Government.

² I shall refer to Counsel for the Respondent as Company Counsel or Company

³ All dates herein are 2005 unless otherwise indicated.

those engaged in lawful union hand billing, interrogating its employees concerning their union activities, and threatening it employees with unspecified reprisals because of their union activities. It is also alleged the Company violated Section 8(a) (3) and (1) of the Act by on or about July 22 suspending and on or about July 29 terminating its employee

5 Raquel Brown (Brown) because she engaged in protected conduct and to discourage membership in a labor organization and to discourage other employees from engaging in like activities.

10 The Company denies having violated the Act in any manner alleged in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering briefs filed by Counsel for the Government and Company, I conclude, as more fully explained below, the Company violated the Act substantially as

15 alleged in the complaint.

The Company is a Delaware corporation with an office and place of business located in Gaffney, South Carolina, where it has been, and continues to be, engaged in the business of manufacturing chassis' for commercial vehicles. During the past 12

20 months, a representative period, the Company in conducting its business operations purchased and received at its Gaffney, South Carolina, facility goods and materials valued in excess of \$50,000 directly from points outside the State of South Carolina. The parties admit and I find the Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

25 The parties admit and I find the Union is a labor organization within the meaning of Section 2 (5) of the Act.

The parties admit and I find that President/General Manager Reid Bigland (General Manager Bigland), Human Resource Manager Mike Tolbert (HR Manager Tolbert) and Production Supervisor Britt Bernhardt (Production Supervisor Bernhardt) are supervisors and agents of the Company within the meaning of Section 2(11) and (13) of the Act. The actions and allegations underlying this case arise from or are related to the Union's 2005 organizing campaign that commenced that Spring. At pertinent times

30 herein the Company and Union have been parties to a neutrality agreement pursuant to which the Company agrees its employees may decide whether they desire to be represented by a union without interference by the Company.

40 **I. Allegations, Facts and Findings**

A. No Talking Rule Against pro-Union Employees

It is alleged at paragraph 8(a) of the complaint the Company by Production Supervisor Bernhardt in mid-June and HR Manager Tolbert in late-June and July 20,

45 promulgated and enforced an unlawful no-talking rule against pro-Union employees in violation of Section 8(a)(1) of the Act.

The Company issued a No-Soliciting Memorandum sometime during the early part of 2005, “March, April time frame probably.”

5 Seven year employee and quality control inspector Billy Ridings (Ridings) worked on Line II in the summer of 2005. Ridings and HR Manager Tolbert spoke alone about the Union in late June on the assembly line. According to Ridings, HR Manager Tolbert told him someone had complained Ridings was talking about the Union on the shop floor. Tolbert told Ridings he did not care if he was for or against the Union he
10 could not talk about it on the shop floor. Ridings testified the Team Leader for Service had an antiunion T-shirt hanging in his office visible to all employees.

HR Manager Tolbert acknowledged he spoke with Ridings, after getting a report Ridings was soliciting for the Union on the assembly line, but, stated he simply told
15 Ridings he could not solicit for the Union on working time and asked he not do so. Ridings agreed he would not.

Seven year assembly employee Georgia West (West) testified she and HR Manager Tolbert spoke in late June or early July in the work area about the Union. West testified Tolbert explained he could care less whether “anybody wanted the Union or not,” “he wasn’t . . . against it or for it . . . he was neutral; but that we could not . . . talk about it on Company time or in the working areas.” West said she and other employees had, and could, for example, talk about and solicit for Avon products, Girl Scout cookies and lingerie sales while working.
25

On July 20, West and employee Jim Upp, were assigned to cleaning (sweeping) an outside parking lot because of a power failure that had shut down the assembly line they worked on. West testified HR Manager Tolbert, approached and said he had a complaint she was campaigning for the Union. West explained, “we’re out here sweeping” and “I’m able to talk about it.” Tolbert responded, “not on Company time or
30 in working areas.” West protested saying from what she understood they could not hand out leaflets or pass out literature but could “talk about it.” Tolbert replied, “No ma’am. I’m telling you you can not.” Tolbert told West he didn’t care if she was for or against the Union she just could not engage in union activities during working time.

HR Manager Tolbert acknowledged a conversation with West on July 20 in an offline but working area outside the plant where employees were as a result of a power failure on the assembly line. Tolbert said he spoke with West after an employee complained West had approached him on the assembly line and asked him to join the
40 Union and mentioned a union card. Tolbert told West not to solicit employees “while she was working and when another employee was working.” West responded she thought she could talk about the Union anytime and “grabbed” Tolbert’s wrist and “twisted it around” so as to be sure Tolbert would know exactly what time, 10:30 a.m., their conversation took place. Tolbert stated the Company had a no-soliciting policy. Tolbert
45 testified employees were not prohibited from talking about religion, politics and sports in the plant working areas.

5 Raquel Brown testified she was speaking with a couple of her coworkers about the Union while working on Line II in late-May. Brown stated Production Supervisor Bernhardt approached, “and he told me that, you know, I couldn’t talk – to do it on my own time” Brown said she told Bernhardt about her rights, “I said talking about the Union is one of them and I know my rights.”

10 Production Supervisor Bernhardt did not recall having such a conversation with Brown in May on the plant floor. Bernhardt acknowledged observing Brown talking to employees about the Union and handing out literature, but he did not “remember seeing her talking to people out on the shop floor.” Bernhardt spoke with other employees telling them their union activities needed to be in the canteen or on the patios outside the facility.

15 Production Supervisor Bernhardt did not deny the comments Brown attributes to him. The remarks are in keeping with other ones made by Bernhardt. I credit Brown’s testimony as out lined above.

20 Did the Company through its supervisors and agents promulgate and enforce a rule against talking about the Union during working time, while allowing the discussion of other nonwork-related subjects? Before addressing the question it is helpful to briefly set forth Board law governing this type issue. The Board in *Jensen Enterprises, Inc.*, 339 NLRB 877, 878 (2003) noted:

25 It is settled law that an employer may forbid employees from talking about a union during periods when the employees are supposed to be actively working, if that prohibition also extends to other subjects not associated or connected with their work tasks. However, an employer violates the Act when employees are forbidden to discuss unionization, but are free to
30 discuss other subjects unrelated to work, particularly when the prohibition is announced or enforced only in response to specific union activity in an organization campaign. [citations omitted]

35 It is clear the Company promulgated and enforced a rule against talking about the Union during working time. The record also clearly demonstrates the Company allowed discussion of various nonwork-related subjects during working time without interference, or adverse action against its employees. The evidence establishes employees were free to and discussed their views about religion, politics and sports. The employees sought support for and spoke about Avon products, Girl Scout cookies, and lingerie sales.
40 Simply stated the employees discussed nonwork-related matters among themselves and only when the subject matter was the Union did it become any kind of a problem.

45 I reject the Company’s contention it was simply responding to employee complaints of harassment or that it spoke equally to these opposing the Union as justification for its actions. First, there is no showing it responded to any complaints involving any non work-related matters which it freely allowed. Second, even addressing

those who opposed the Union is no defense because the prohibition is only against conversations involving the Union.

5 Accordingly I find, as alleged, the Company by promulgating and enforcing a no-talking rule against pro-Union employees, violated Section 8(a)(1) of the Act.

B. Disparate Enforcement of Company's No Solicitations/No Distribution Rule Against pro-Union Employees

10 It is alleged at paragraph 8(b) of the complaint that HR Manager Tolbert in late-June disparately enforced the Company's no solicitation/no distribution rule against pro-Union employees.

15 As noted earlier the Company issued a memorandum before the 2005 Union campaign in which the employees were advised of the Company's no-solicitation policy. During the 2005 campaign there were pro-Union and antiunion "T" shirts prominently displayed in working areas. According to employees Ridings and Vincent Edwin Hambright an antiunion "T" shirt was displayed in the Service Department Team Leader's office. Employees Benita Michelle Wilson and Kristi Patterson testified they
20 observed solicitation in working areas on working time for Girl Scout Cookies, dinner plates, doughnuts, Avon products and various fund raising initiatives. Patterson said antiunion literature was placed on tables in working areas as well as on employees' tool boxes.

25 Brown testified HR Manager Tolbert talked with her in May or June along side her work line. Tolbert told Brown "Bubba Belue, Second Shift Supervisor," had told him Brown "was getting cards signed" and was disrupting second shift employees. Brown denied she had been getting cards signed or disrupting second shift employees and Tolbert told her she "was not to pass out literature during working time and not in
30 working areas." According to Brown, Tolbert said she could hand bill in the canteen, break areas, restrooms and outside the plant.⁴

HR Manager Tolbert testified that in May, Supervisor Belue reported Brown was staying after her first shift and soliciting for the Union during the second shift disrupting
35 the second shift employees. Tolbert said he thereafter went to Brown's work station and "I asked her to not do that, to not solicit for the Union while other people were working." Brown promised she would not. Tolbert testified he never threatened Brown at any time.

⁴ Government Counsel asks that this testimony be considered in support of complaint paragraph 8(f). Specifically Government Counsel argues that HR Manager Tolbert threatened Brown with unspecified reprisals by telling Brown she had been disrupting second shift employees. Threatening employees with unspecified reprisals if they engage in union or protected activities has a coercive effect on employee Section 7 rights. This includes explicit or implicit threats. I, however, find no explicit or implicit threat related to the exchange between Brown and Tolbert regarding Second Shift Supervisor Belue. I shall dismiss paragraph 8(f) of the complaint.

In the interest of maintaining production and workplace discipline an employer can lawfully impose restrictions on oral and written workplace communications by its employees. Employers may enforce valid no-solicitation rules even where the solicitations involve union matters; however, such enforcement may not be disparately enforced against pro-Union employee solicitations. Here it appears the Company did not find solicitations for dinner plates, doughnuts and fund raising activities to disrupt employees but did find disruptive solicitations for the Union on the second shift assuming Brown made such solicitations. Tolbert's instructions to Brown were "to not solicit for the Union while other people were working" but there is no indication in this record that he had any problem with solicitations for any other purposes.

I find, as alleged, the Company through HR Manager Tolbert, in late June, disparately enforced the Company's no solicitation/no distribution rule against pro-Union employees in violation of Section 8(a)(1) of the Act.

C. Interference with Lawful Hand Billing and Surveillance

It is alleged at paragraphs 8(c) and (d) of the complaint that an unidentified male security guard interfered with lawful union hand billing outside the facility entrance on July 1 and August 26 and surveiled union activity on July 1, by recording the identity of lawful hand billers.

Employee West handed out union flyers or leaflets on the evening of August 26 at the rear entrance door to the Company facility. West positioned herself at the right of the door where employees exit the plant. She was approached by a female security guard and:

She come out and told me that I could not hand out leaflets and that I needed to get off the premises, and I told her I was told that I could hand out leaflets; and she said, no ma'am, you can not. You need to leave. So I left.

At around 11p.m., on July 1, Brown handbilled at the front entrance to and near the front doors of the plant. Brown distributed hand bills on behalf of the Union in-plant organizing committee. A male security guard, whom Brown did not know, approached telling her to leave the premises and go out to the road. Brown told the security guard she had a right to hand bill and was going to do so. The security guard told Brown he had "orders from management" not to allow her to hand out literature. Brown told the security guard she worked there and was not going anywhere. The security guard asked Brown for her name and Company badge number which she provided. Brown said the security guard did not know if she was an employee or an outside organizer.

The Company concedes the facts regarding these two complaint allegations but asserts the allegations are without merit as a matter of law. I am persuaded the Company's legal contentions are wrong.

The conceded facts show that around 11:00 p.m. on July 1, Brown hand billed at the front entrance to and near the front doors of the plant. The hand bills Brown was distributing were for the in-plant organizing committee. Brown was approached by the security guard and told to leave the premises and go out to the road. Brown protested saying she had a right to be there. The security guard told her he had orders from management not to allow her to do so. Brown told the security guard she was an employee and was not going anywhere. It was only after Brown told the security guard she was an employee that the security guard demanded and was provided Brown's name and Company badge number. I find the Company through its security guard and with direct orders from management interfered with lawful union hand billing on July 1 and August 26. I also find, as alleged, the Company engaged in unlawful surveillance of union activity by the guard recording the name and badge number of Brown. The Company would rely on *St. Clair Memorial Hospital*, 309 NLRB 738, 739 (1992) for a finding of no unlawful surveillance by the security guard's recording Brown's name and badge number. In finding no violations in *St. Clair Memorial Hospital*, *supra*, the judge considered "the large number of hospital employees" not in hospital uniform and the fact that non employees were also hand billing at the hospital during the time in question although they were not on hospital property. Here it is one person hand billing who has identified herself as an employee. The only valid purpose to record her name and badge number was to interfere with her protected rights.

D. Interrogation

It is alleged at paragraph 8(e) of the complaint that HR Manager Tolbert, during May, interrogated employees about the identify of union supporters.

Brown approached HR Manager Tolbert in May in the canteen where she was handing out union literature. Brown testified she told Tolbert:

I had some concerns because I had two group leaders that approached me. They said that they are for the Union, but management, [Director of Manufacturing] Mark Hernandez, told them if they signed any cards or wear any buttons they will be demoted. And I talked with Mike [Tolbert] to see, you know, can - - as group leaders, can they do that, and he said they have their free reign with whether they want to go for the Union or not. And I asked him would he please send out a Memo saying that group leaders, you know, got their free choice, and Mike Tolbert told me that wasn't his job [t]hat was Mark Hernandez [job].

Brown testified that when she asked HR Manager Tolbert to send an e-mail to all group leaders informing them they had a free choice to support or refrain from supporting the Union, Tolbert asked her who the two team leaders were that had talked to her. Brown refused to give him their names.

HR Manager Tolbert's office faces the direction of where some hand billing occurred place at the Company. In May, Tolbert observed employee Ridings and a

female passing out hand bills. Tolbert did not recognize the woman. He attempted to speak with the woman but by the time he got outside she had left. The next day HR Manager Tolbert asked Ridings who the woman was. Ridings told Tolbert she was not an employee but someone who, he thought, was from Tennessee. Tolbert told Ridings, “if you happen to see her the next time, tell her that if she wants to pass out hand bills, she should go across the street. She’s welcome to do it, but I can’t let her do it on our property by virtue of her being potentially injured.” Ridings said he would tell her if he saw her again. Tolbert explained the Company had a rule prohibiting non-employees from engaging in distribution of literature on Company property.

Interrogation is not, by itself, a per se violation of Section 8(a)(1) of the Act. The test for determining the legality of employee interrogation regarding union sympathies is whether under all the circumstances the interrogation reasonably tends to restrain or interfere with employees in the exercise of their statutory rights. *Mathews Readymix Inc.*, 324 NLRB 1005, 1007 (1997). Under the totality of circumstances approach, such factors as whether the interrogated employee is an open and active supporter of the union, the background surrounding the interrogation, the nature and purpose of the information sought, the identity of the questioner, and the place and/or method of the interrogation are examined. *Rossmore House*, 269 NLRB 1176 (1984), *affd. sub nom. Hotel Employees Union Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985) See also: *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964).

Applying the Board’s totality-of-the-circumstances test, did HR Manager Tolbert unlawfully interrogate Brown? Certain factors would tend to support a finding of no unlawful restraint or interference with employees rights. First, Brown sought out Tolbert and initiated their conversation. Second, she was an open and active supporter of the Union and was handing out union literature in the canteen when she approached HR Manager Tolbert. On the other hand Brown was concerned because two non-supervisory group/team leaders had told her that Director of Manufacturing Hernandez told them (the two team leaders) that if they signed union cards or wore union buttons they would be demoted. Although Tolbert, a relatively high level Company official, told Brown group/team leaders had “free reign” regarding the Union he still wanted to know the names of the two group (team) leaders that had said they were for the Union but had been warned they would be demoted for supporting the Union. Brown refused to provide the names. The coercive impact of Tolbert’s request for names of those wanting to support the Union is clear. Employees would be demoted for supporting the Union. In light of all the circumstances I am persuaded HR Manager Tolbert’s asking Brown who the team leaders were that supported the Union would tend to coerce a reasonable employee and thus violated Section 8(a)(1) of the Act. I reject the Company’s contention that HR Manager Tolbert was simply trying to learn the group/team leaders’ names so he could investigate the situation and ensure compliance with the neutrality agreement between the Union and Company. Tolbert already knew which Company official, Director of Manufacturing Hernandez, was involved. Tolbert could have commenced an investigation, if he desired to conduct one, through Hernandez without trying to find out from Brown who the two employee type group leaders were.

HR Manager Tolbert's interest in any involvement by employees with the Union is also demonstrated by his questioning employee Ridings about the identity of a woman hand billing with Ridings in May outside the plant in view of Tolbert's office. Tolbert who was unable to locate the woman and the next day asked Ridings who she was. I find Tolbert's asking who the woman was that had been helping Ridings hand bill to be coercive notwithstanding Tolbert's comments to Ridings that he was fearful the woman, as possibly a non-employee, might be injured on Company property. Tolbert's seemingly ready explanation for all occasions where he makes inquiries or takes actions are unpersuasive toward finding his conduct to be non coercive.

E. Suspension and Termination of Brown

It is alleged at paragraphs 9 and 10 of the complaint that the Company suspended Brown on July 22 and terminated her on July 29, because she engaged in protected concerted activities and because she supported the Union and to discourage employees from engaging in such activities. The Company's actions are alleged to violate Section 8(a)(3) and (1) of the Act

**1. Brown's and Other Employees' Testimony
Regarding the July 21 Incident**

Brown worked at various jobs for the Company for approximately seven years prior to her termination. Brown was a known vocal and visible supporter of the Union not only in the most recent union campaign but in two prior campaigns. In the most recent campaign Brown contacted the Union in April, and shortly thereafter Union International Representative David Bortz, came to the Company and hand billed for the Union with her. Brown gave out union literature inside and outside the plant and in the canteen and bathrooms. Brown wore union buttons and pro-union "T" shirts each day at work.

Most recently Brown was assigned to the labor pool from which she was referred to various work assignments throughout the plant covering for absent employees or as extra workers where needed. Brown was acknowledged as a pretty good worker capable of performing any job on the assembly line.

Brown testified that in early to mid-July her supervisor, Production Supervisor Bernhardt, told her he needed her to work fuel tank installations because he had two employees "out on stress leave." Brown told Production Supervisor Bernhardt, she had not performed that job in a while and "did not know it." Bernhardt told Brown he needed her and "to do the best" she could. Brown also asked Bernhardt not to assign her to tank installations where Team Leader Childers would direct her work "because of the unfair treatment that [she] had . . . from Eddie [Childers] in the past." Brown proceeded as instructed to the fuel tank area for work but could not remember the various module numbers for tank installations. Brown explained module numbers are assigned to such items as button straps, nuts, bolts and watches needed to install the various fuel tanks.

Brown had some trouble installing tanks so Bernhardt assisted her for a while but left saying he needed her there and to “just do the job.”

On the morning of July 21, Brown worked Line II in the assembly area. Line II is the area for assembling RV’s (recreational vehicles). A conveyor belt in the floor moves each RV chassis down the line for assembly. There are eight or nine work stations on assembly Line II. The conveyor belt continues to move within the approximately 20 feet of work area in each work station. If for any reason there is a need to stop the assembly line there are color coded switches in each work station. A switch with a yellow warning light indicates there is a problem on the line and if not corrected would necessitate shutting down the line. A switch with a red warning light will shut the assembly line down. Anyone may, if necessary, push either switch at anytime. As the conveyor moves along the assembly line each RV chassis is built, piece by piece, while moving through each work station.

At the beginning of each work shift the assembly line team leaders⁵ meet with their assigned teams at “huddle” meetings. Specific individual work assignments are made at the “huddle” meetings.

Childers⁶ is team leader for Line II RV Assembly and held that position on Thursday July 21. At his huddle meeting that morning he made specific job assignments to his team members including Brown. According to Brown, Childers told her she would be installing fuel tanks that day. Brown told Childers she did not know the job well enough to do it by herself. She testified Childers told her she would have to do the job anyway. Brown told Childers she would just go home to which Childers replied, “if you’re going to go home, go home.” Brown stayed and proceeded to a computer to look up module numbers for the first chassis on the line. According to Brown, Childers diverted her to module wiring work for a while before she installed fuel tanks. Brown testified the first chassis had already moved down the assembly line out of her area so she hurried to obtain the necessary nuts, washers and plates to install the fuel tank on that chassis. Brown did “subbing” work getting the chassis ready to receive the fuel tank. The first chassis had by that time reached the next work area and was beginning to rise off the dolly it was resting on. Brown asked a fellow worker, Michelle Wilson, to hit the red warning light switch to stop the assembly line. Brown feared the chassis would come off the dolly creating a safety problem. According to Brown, Childers came to the line and told her to get the tank for installation. Brown said she and another employee brought a fuel tank over to the line and after some difficulty she, Childers, and another employee installed it on the first chassis. The red warning light switch was pulled and the assembly line commenced moving again.

Brown testified she then proceeded to look for the parts needed to install the fuel tank on the second chassis. Shortly thereafter Childers told Brown she had failed to

⁵ The parties stipulated for purposes of this trial that the team leaders are not supervisors within the meaning of Section 2(11) of the Act.

⁶ The parties stipulated that Childers, as a team leader, was empowered by the Company to assign work to the employees on his team.

install an AC clamp on the first chassis. Brown walked to the end of the assembly line and clamped the first chassis. Brown then resumed getting the second chassis ready for its fuel tank when Childers told her she had failed to “button bend the side of the rail” on the first chassis. Brown testified she had “missed about three or four button bends, so she
5 grabbed the button bends in . . . hand and . . . walked back to . . . the first chassis, and . . . button bended and clipped them and . . . walked back.” Brown again started preparing the second chassis to install the fuel tank but by that time the second chassis had reached a point where it was rising off the dolly. Brown asked employee Wilson to hit the red
10 warning light and stop the assembly line.

Brown testified:

I told Eddie [Childers] . . . the chassis is coming off the
15 dolly and he said you know this job. You’re lazy. You don’t want to work for me. He said get, go on up yonder. Move out of the way. I’ll finish it, and I said, Eddie, you ain’t going to be standing here harassing me⁷, disrespecting me like that, talking to me any kind of way; and I said this is a safety hazard, and he just told me to move. And I
20 stepped back and stood, and I immediately called a supervisor.

Brown said Childers and employee Wilson installed the fuel tank on the second chassis taking about 3 to 5 minutes to do so.

Brown testified that in response to her call for a supervisor Acting Supervisor Jeff “Woody” Wright asked her what the problem was. Brown told Wright she and Team
25 Leader Childers “just got into a big argument” and started to tell Wright about it when Wright walked away to speak with Team Leader Childers. Brown stated Production Supervisor Bernhardt then came into the area and spoke with Childers and Wright.
30 Brown said that when she saw no one was really going to talk with her about the situation she went back to installing fuel tanks on the assembly line.

Later that morning, in response to her request, Brown met with HR Manager
35 Tolbert. Brown told Tolbert she and Childers “just got into a really bad, you know, blowout” and she had witnesses that could verify how Childers had talked to her. According to Brown, Tolbert told her he had a meeting that afternoon (July 21) but could meet with her on the following Monday afternoon.

Brown continued to work on the assembly line for the remainder of the day
40 without incident. Brown said she never refused to perform any work and never at anytime sat down on a fuel tank.

⁷ Another employee testified about harassment. Employee Georgia West testified two team leaders had harassed her, one of which was Childers. West said she could not take the harassment that she was having migraine headaches and had to see a counselor. West was on medical stress leave from April 28 until June.

Seven year employee Alethia Gatewood was assigned to the work pool and worked Line II RV Assembly on July 21. Also working in the area that morning were employees Brown, Wilson, Kathryn Whitworth and Jay Corry. Gatewood said she observed Brown and others having trouble getting the fuel tanks installed on both the first and second chassis. According to Gatewood, Whitworth was dropping (installing) fuel tanks with Wilson. Wilson was also building modules and Brown was doing harness work on modules. Gatewood stated Whitworth got behind and Brown helped her with the fuel tank installations. Gatewood said Childers came down and helped install the fuel tank on the first chassis. Gatewood stated Brown and Wilson had trouble getting the fuel tank installed on the second chassis. Gatewood said one person could install a fuel tank but it was easier when two did it. Brown called for Childers to help with the tank on the second chassis. Gatewood stated Childers came down and “was complaining about (Brown) not getting the tank in.” According to Gatewood, Childers said:

she [Brown] wasn’t trying and if she couldn’t do any better than what she was doing, then he needed her to step out of the way . . . to step back and let somebody else do it or she just needed to get out of the way.

Although Childers had problems installing the tank he and Wilson were able to do so on the second chassis. Gatewood said Brown stepped back and watched the installation on the second chassis. Gatewood testified Brown returned to work after the fuel tank on the second chassis was installed.

Employee Wilson testified she did module work the morning of July 21. She said she was later asked to help Brown install fuel tanks. Brown and she had trouble getting the fuel tank installed on the second chassis. Wilson testified Brown told Childers they needed help “[a]nd when Eddie [Childers] came down there, he told her [Brown] to get out of the way because she didn’t want to be down here anyway. And so she [Brown] moved back and crossed her hands, and that’s when me [Wilson] and him [Childers] finished putting it on, put the light out, and it went on down the line.” Wilson testified Brown told Childers “you can’t talk to me like that.” Wilson never saw Brown sitting on a fuel tank only just standing there when she was told to get out of the way.

On July 22, Brown was notified by Team Leader Childers she was to meet with Production Supervisor Bernhardt and Manager Ron Manes in the office for an investigation of the events the day before. Production Supervisor Bernhardt told Brown the Company wanted her side of the events. Brown asked for a witness and Manes said no. Brown asked why because in the past the Company had allowed witnesses. Manes asked if she was refusing to participate in the investigation. Brown said no but for her protection she would like to have a witness and asked if she could have someone from the Union. According to Brown, Manes, “slapped his hand on the table” and said “don’t you dare bring the Union . . . in this . . . [t]he Union had nothing to do with this.” Brown told Manes he misunderstood that she was not asking for an outsider but rather one of her coworkers. Manes suggested a certain person and Brown declined. Brown asked for HR Manager Tolbert as her witness. Manes refused but offered the President’s secretary.

Brown again asked for Tolbert. Manes left the office came back and said Tolbert did not want to be a witness. Brown began to participate in the investigation at that point without a witness.

5 Brown testified she told the investigators Childers had assigned her to install fuel tanks that morning. She stated she thereafter performed her assigned tasks but at that time the first chassis was about to pull off the dolly it rested on so the assembly line was stopped by a coworker at her request. She said the same thing happened on the second
10 chassis because she could not get caught up and again the assembly line was stopped by a coworker. Brown told the investigators the only thing she was trying to do in stopping the line was to prevent an accident. Brown told Manes and Bernhardt she had witnesses to verify her story. Brown told them Team Leader Childers had said she was lazy and didn't want to work for him and for her to get out of the way and he would install the fuel tank himself. Manes wanted to know how long it took to install a fuel tank.

15 The meeting ended with Brown being told she was placed on suspension until further notice. Brown was asked to turn in her employee badge which she did and Brown's tool box was brought to the office and, with her permission, searched for any Company property. Brown was escorted to the door and she left the plant at that time.

20 Brown next heard from the Company on July 29, when she received a telephone call from HR Manager Tolbert. Tolbert told her the Company had come to a unanimous decision to terminate her for the events on July 21. Tolbert told Brown she could appeal her termination to the Company's Board of Appeals and he would help her file the
25 request. Brown did not seek to have her termination considered by the Company's Board of Appeals.

30 On August 1, Brown applied with the South Carolina Employment Security Commission for unemployment compensation and a State claims examiner determined on August 17 that she was disqualified for compensation holding she had been discharged for cause. Brown appealed that finding and appeared at a hearing on her appeal on September 19. The Company did not appear at the hearing. The Appeal Tribunal noted the burden to establish that a claimant was discharged for cause rested solely with the employer. The Appeal Tribunal concluded the Company had not met its burden because
35 it did not appear and present first hand personal knowledge concerning its reason(s) for Brown's discharge. The Appeal Tribunal noted Brown adamantly denied any wrong doing rather contending she was discharged because of her affiliation with and membership in the Union. The Appeal Tribunal held Brown was eligible to receive benefits.

40 Eight year Employee Kristi Patterson worked as an assembler on Line II at pertinent times during the summer of 2005. During the first week of July Team Leader Childers assigned Patterson to perform a job assignment that she was only "vaguely", if at all, familiar with. Patterson asked Childers for help getting started because of her
45 unfamiliarity with the job. According to Patterson, Childers refused to provide her any assistance even just until she could acquaint herself with the assignment and get caught

up. Childers explained to Patterson he did not have the authority to change job assignments around and thus did not provide her any assistance or relief.

5 Patterson testified that the next day Team Leader Childers “put me on another job and told me that he needed me to do the work I was doing the day before . . . and told me that he needed me to do that [additional] job.” Patterson testified, “I told him I wasn’t going to do it.” Patterson said Childers had told her the day before he did not have the authority to change job assignments around and could not give her any help so she did not feel he had the authority to change her assignment around the next day when it was
10 just to suit himself. Patterson testified:

When I refused to do it, the chassis kept rolling up the line and it was not being done; and me and Eddie [Childers] had words. He tried to make me do it, and I told him I was not going to do it, and I told him he needed to
15 call Britt [Bernhardt] over there. I would discuss it with Britt [Bernhardt].

Patterson testified Childers called Production Supervisor Bernhardt to the line and spoke alone with him. Patterson then talked with Bernhardt; first on the assembly line, and “he saw how upset I was” so they spoke outside the plant for “probably a half hour.”
20 Patterson testified Bernhardt told her she did not have to do the additional job assignment that Team Leader Childers ordered her to because Childers was wrong. Patterson was never disciplined over the incident in any way.

25 **2. The Company’s Version of The Events of July 21 and The Company’s Actions**

Line II Team Leader Childers testified his job duties included making job splits or assignments for his team members each day. Childers makes his assignment selections based on his knowledge of the performance levels and skills of his team members.
30 Childers has known Brown for sometime and stated she was “a pretty good worker” “capable of running any job on Line II.”

Childers conducted a “huddle” meeting with his employees on the morning of July 21. He asked Brown to assist in fuel tanks. Childers said he was at that time training an employee for that position but needed Brown to “install and set up fuel tanks on the lines” that day. Childers chose Brown because she was experienced in fuel tank installation and had previously installed tanks under his direction. Team Leader Childers testified that when he told Brown she was assigned to fuel tanks on July 21, she told him
35 “if she was going to be putting [in] tanks, that she was going to go home.” Childers explained to Brown he needed her to set up each chassis and install the fuel tank, built by employee Whitworth, on each chassis. Childers told Brown fuel tank installation was all he needed her to do on July 21. Childers described such an assignment as half a job.
40

Childers testified he continually inspected the work being performed on the assembly line and added “I look over all my team members’ work to make sure
45 everything is happening the way it’s supposed to happen.” While making checks Childers

noticed Brown was performing harness wiring work, a task he had not asked her to perform, and the fuel tank for the first chassis was not being installed. Childers went to the tank installation area on the line and helped install the tank on the first chassis. Childers told Brown he was grateful for her team work but all he needed her to do that day was set up and install fuel tanks that he had an employee responsible for harness wiring. Brown responded no problem.

Childers returned to his inspection and oversight duties and again notice the line was in trouble in that the fuel tank for the second chassis was not being installed. Childers testified he notice Brown was not “prepping” the second chassis nor getting it ready to install the fuel tank. Childers approached Brown but she accused him of harassing her. The assembly line was at the point where the crane to install the fuel tank could not proceed any further resulting in a shut down. Childers said that when the line shut down Brown walked over and sat down on the fuel tank and crossed her arms. Childers testified Brown told him if he wanted the tank installed on the second chassis he could do it himself. Childers used two hoists and worked with other employees and installed the fuel tank. Childers testified he asked Brown twice to help install the fuel tank on the second chassis but she just stood up with her arms crossed and “never made any attempt to help me put the tank in.” Childers explained that the full six minutes while he and employees Wilson and Whitworth installed the fuel tank on the second chassis Brown just stood with her arms folded and did not perform any work. Childers denied asking or telling Brown to step aside. Childers said he was very respectful to Brown. Childers testified Brown asked to speak with a supervisor but refused to talk with Acting Supervisor Jeff “Woody” Wright. Brown later spoke with Production Manager Bernhardt.

Brown worked the remainder of the shift without incident.

Childers prepared an e-mail memorandum on July 22, of the July 21 morning events. The e-mail follows:

From: Edward Childers
Sent: Friday, July 22, 2005 1:34 PM
To: Britt Bernhardt; Jeff Wright; Ron Manes; Edward Childers
Subject: RAQUAL BROWN

Before we got started on 7-21-05 Raqual Brown asked me if she was going to run fuel tanks.I told her yes she would be in tanks.That’s when she told me that she was going to go home.So we started the line up and was trying to work out job splits.When the First Chassis came by I realized that the fuel tank was not in.So I went to the station to help get the tank in.After that I went back over the job splits to make sure everyone understood what their responsibilities were.I then walked back to the end of the area and watched while the second chassis come by.It was not subbed up and there was not a tank in it also.So I asked Raqual Brown.Why wasn’t the tank in the chassis.She then said that I need to quit harassing her.All I said was we need to get the tank in.She hit the light,sat down on a tank.Then got

up and crossed her arms. I asked again are you going to help or what. She told me that I could put the tank in, and remained standing there.

Witness:

Michelle W.

Kathren W.

Production Supervisor Bernhardt spoke with Brown approximately two or three weeks before the events of July 21, about being assigned to fuel tank installations. Bernhardt testified Brown told him she had been on fuel tanks for seven or eight months and did not feel she should have to do it. Bernhardt testified:

I explained to her that we were in the process of training other individuals to do fuel tanks, and I needed her to run fuel tanks until we could get some cross training accomplished; that's pretty much where we left the conversation.

Bernhardt learned on July 21, from acting Supervisor Wright there had been an incident or problem with Brown and Team Leader Childers over the installation of fuel tanks. Bernhardt spoke with Team Leader Childers for his account of what had taken place.

Bernhardt began an investigation of the July 21 events on Friday, July 22. Over the next days Bernhardt interviewed fourteen potential witnesses two of which were Childers and Brown. Bernhardt testified he started his investigation by interviewing Brown on either July 22 or 25. Bernhardt took notes of his interview with Brown, which notes as more fully described were received in evidence. Bernhardt explained the notes of his interview with Brown were not his original notes but were rewritten utilizing the original notes which no longer exist. From Bernhardt's rewritten account of his interview with Brown it appears Brown said there were manpower issues at the beginning of the shift on July 21. Brown told Bernhardt Team Leader Childers had assigned her to fuel tank installation and she had told Childers she would just go home but did not. According to Bernhardt's notes Brown told him employee Whitworth had been assigned to install fuel tanks but was late for work on July 21. Brown explained she did not have time to get the fuel tank installed on the chassis and hit the light which stopped the assembly line. Brown told Bernhardt that Team Leader Childers became upset because she stopped the line and told her she was lazy and did not want to be in the area. Bernhardt's notes reflect Brown told him Childers was "hostile" "raised his voice" and was "very disrespectful." Brown felt it was a safety concern when she stopped the line. Bernhardt's notes reflect Brown said she had problems with Childers and said he would not cross train someone to work fuel tank installations.

Bernhardt testified that when he interviewed Brown, Manager Manes, who was present, did not say, in response to Brown's request to have a witness, "don't you dare bring [in] someone from outside the plant" or even words to that effect. Bernhardt testified Manager Manes did not make any disparaging or derogatory comments about the Union or Brown's desire to have union representation. Manes did not testify.

Production Supervisor Bernhardt testified Brown and Childers both suggested witnesses to be interviewed for his investigation. The additional twelve witnesses interviewed were employees Kathryn Whitworth, Chris Lipscomb, Michele Wilson, Alethia Gatewood, Jay Corry, Barry Ellis, Brian Toler, Brian Byers, Kristi Patterson, Robert Wilk, Carl Denton and Acting Supervisor Jeff Wright.

Bernhardt testified Acting Supervisor Wright provided Manager Manes and he an e-mail on Tuesday, July 26, regarding his knowledge of the Childers and Brown situation. Wright's e-mail follows:

From: Jeff Wright
Sent: Tuesday, July 26, 2005 3:26 PM
To: Britt Bernhardt; Ron Manes
Subject: Employee Situation

I was assisting Chris Lipscombe in catching up bell crank assemblies that was line short when I overheard Raquel Brown say that you're not going to harass me Eddie and Eddie replied that I'm not harassing you but that we couldn't stop the line, at this point I couldn't hear what else was said because I was across the chassis from them and they had stepped down the line a few feet further, the next thing that I noticed was that Raquel had stepped back from Eddie and crossed her arms and Eddie proceeded to install the fuel tank to keep the line running. The next time I looked up which was a couple of minutes later and Raquel had walked down to the next chassis.

Production Supervisor Bernhardt testified he prepared a list of eight questions for those he interviewed because he "just didn't want to miss . . . any key points." Bernhardt prepared a separate sheet with the questions for each employee he interviewed. Bernhardt said he did not allow those he interviewed to see, sign or otherwise adopt what he wrote on the forms when those interviewed were answering the questions. Included in the questions were whether Brown "hit the light" that stopped the line, sat "down on the tank" and "cross[ed] her arms." Also included were questions regarding whether Brown was asked to do something "unreasonable" "unsafe" "outside" her normal job duties or if Team Leader Childers was "disrespectful." The notes Bernhardt made indicates Whitworth said she (Whitworth) was learning to install tanks but was not that familiar with the work and had problems so Team Leader Childers helped her install the fuel tanks. Bernhardt's notes reflect Whitworth saw Brown "standing with her arms crossed" and that she heard Brown tell Childers he could install the tank. Bernhardt's notes regarding his interview of Lipscomb reflects Lipscomb never saw Brown stop the line, sit on a tank and/or cross her arms. The notes reflect Lipscomb said Team Leader Childers asked Brown "if she was going to install the tank" and that Brown said, "no, [she] want[ed] to talk to Britt [Bernhardt]." Bernhardt's interview notes of Wilson reflects Childers said "look out, you don't want to work in this section anyway," and that Brown stood off to the side and Childers installed the tank. Bernhardt's interview notes indicate

employees, Gatewood, Ellis, Toler, Beyers, Patterson, Wilk and Denton did not, for whatever reason, hear Brown tell Childers he could put the fuel tank in. Bernhardt's notes of the interviews reflect employee Gatewood did not see Brown standing or sitting with her arms crossed.

5

In a memorandum to Manager Manes dated July 28, Production Supervisor Bernhardt recommended Brown be discharged. Bernhardt's memorandum states in part:

10

I interviewed fourteen (14) potential witnesses to the incident, including Eddie Childers, Racquel Brown, and Jeff Wright. Based on my investigation, evidence supports that Racquel did refuse to complete the job assignment and definitely counter-productive. No one indicated Eddie asked Racquel to do anything unreasonable or unsafe, she simply refused to install the fuel tank. For the reasons mentioned, it is my recommendation Racquel should be terminated immediately for insubordination and disruptive behavior.

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Although Manager Manes did not testify his memorandum of July 28, to HR Manager Tolbert, Director of Manufacturing Hernandez and President/General Manager Bigland recommending Brown be discharged was received in evidence.

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Manes memorandum reflects he concluded: that Brown refused to perform her assigned duties; that she had sufficient time to perform the duties had she elected to do so, that she raised no safety concerns; that she needlessly disturbed the assembly line, and was insubordinate.

30

Director of Manufacturing Hernandez testified he knew Brown as one of the employees on assembly Line II. Hernandez heard from management personnel as well as assembly line employees that Brown supported the Union. Hernandez heard of the incident with Team Leader Childers and Brown while it was being investigated. After the investigation Production Supervisor Bernhardt and Manager Manes forwarded recommendations to him urging Brown be terminated "based on insubordination for not following work instructions." Hernandez made the decision to terminate Brown for insubordination.

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Hernandez met with HR Manager Tolbert to see whether there had been any similar incidents documented in the past. Hernandez testified HR Manager Tolbert indicated there had been one such incident where a David Holland had refused to perform a work assignment and was terminated. The Holland termination took place in 2001 and Hernandez acknowledged he had no involvement in Holland's discharge.

45

It appears from Company records that on December 14, 2001, David Holland was instructed by his Team Leader to move from one work station to another for work. Holland told his Team Leader three separate times that he was not going to the new assignment.

The records reflect that Holland acknowledged when confronted with his refusal that he had refused to go to his assignment and was placed “immediately on a final warning.” After some discussion among management regarding Holland’s actions he was placed on suspension. Holland requested and was granted a meeting with management where he again acknowledged he simply refused to go to the assignment he had been directed to and stated “that emotions had gotten the best of him during the encounter.” Holland was terminated on December 17, 2001. Holland appealed his termination to the Company Board of Appeals which upheld his termination.

3. Analytical Frame Work and Application

The analytical frame work for determining employer motivation in a case alleging a discriminatory discharge, as is the case herein, was established by the Board in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982). Under *Wright Line*, the Government must first prove, by a preponderance of the evidence, that animus against protected conduct was a motivating factor in the adverse employment action. If the Government succeeds in establishing this initial burden, the burden of persuasion then shifts to the employer to demonstrate it would have taken the same action even in the absence of the protected conduct. *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004). An employer simply presenting a legitimate reason for its actions is not enough. *T. J. Trucking Co.*, 316 NLRB 771 (1995). To sustain the initial burden, the Government must demonstrate by preponderant evidence: 1) the employee’s pro-union activity, 2) employer knowledge of the pro-union activity, 3) that the employee’s pro-union activity was a substantial or motivating reason for the employer’s action, and, 4) there was a causal connection between the employer’s animus and its discharge decision. When an employer’s stated motives for its actions are found to be false, the Board may infer from all of the circumstances that the employer’s true motive is an unlawful one that the employer seeks to conceal. *Fluor Daniel, Inc.*, 304 NLRB 970 (1991) enfd. 976 F.2d 744 (11th Cir. 1992) (citing *Shattuch Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966)). The Government may meet its *Wright Line* burden with evidence short of direct evidence of motivation, that is, inferential evidence arising from a variety of circumstances such as union animus, timing or pretext.

Before applying the *Wright Line, supra*, test it is appropriate to note that I find Brown to be a truthful, albeit determined witness, eager to have her side of the events heard and believed. I credit her testimony noting some portions were uncontradicted, while other portions were corroborated by others. Brown’s facial expressions and gesticulations made her testimony all the more believable.

First it is clear Brown engaged in protected conduct on behalf of the Union. Brown not only openly supported the Union in the most recent campaign but had done so in previous campaigns. Brown also was the employee who contacted the Union in the 2005 campaign and shortly thereafter she and an International Union official hand billed at the Company. Brown also hand billed for the Union at the entrances to the plant. Brown wore pro union buttons and pro Union T-shirts at work during the 2005 campaign.

Brown even hand billed inside the plant in the canteen in the presence of supervisors and hand billed in the restrooms.

Company officials acknowledge Brown was a known supporter of the Union.

The Company's animus toward the Union activities of its employees and specifically toward the union activities of Brown has been established. The Company, Production Supervisor Bernhardt in particular, promulgated and enforced against Brown and others a rule against talking about the Union at work, while allowing other non work-related subjects to be openly discussed. The Company, by HR Manager Tolbert, disparately enforced the Company's no solicitation/no distribution rule against Brown and others supporting the Union. The Company interfered with Brown's lawful hand billing at the Company for the in-plant organizing committee and unlawfully surveiled her union activity. Additionally the Company, by HR Manager Tolbert, unlawfully interrogated Brown concerning the identity of certain employees supporting the Union. Manager Manes forcefully, by slapping his hand on the table, told Brown when he interviewed her regarding the events of July 21, not to dare bring the Union into the situation that it had nothing to do with the Union. The Government clearly demonstrated animus against employees' union activities and against Brown's union activities in particular. I am persuaded Brown was discharged for and in the overall context of her visible and vocal support for the Union.

The Company has failed to carry its burden (a burden of persuasion) of establishing its affirmative defense in demonstrating that it would have discharged Brown in the absence of any union or protected activity on her part. The reason, insubordination by refusing a work order, advanced by the Company for the discharge of Brown was factually inaccurate. Brown did not refuse any work assignment. The evidence shows Brown experienced difficulty timely installing fuel tanks on the first two chassis' on July 21. Team Leader Childers approached Brown in a frustrated (real or otherwise) manner and instructed Brown to "move out of the way" which she did while he, with help, installed the fuel tank on the second chassis. Employees Gatewood and Wilson corroborated Brown's credited testimony that she was instructed to move out of the way when Childers helped install the fuel tank on the second chassis. Gatewood, for example, recalled Childers telling Brown "... he needed her to step out of the way," "to step back" "or she just needed to get out of the way." Wilson recalled Childers telling Brown "to get out of the way because she didn't want to be down here anyway." Once the incident involving the second chassis was over with Brown returned to installing tanks and did so for the remainder of the day without incident. Brown did not refuse to do any assigned work but rather followed Team Leader Childers orders to move out of the way. The credible facts establish Brown did not sit down on a fuel tank and/or to refuse to perform her job nor did she tell Team Leader Childers if he wanted the tank on the second chassis installed to do it himself. The evidence does not establish that Brown needlessly disturbed the assembly line. Brown credibly testified the only reason the red warning light that stopped the assembly line was activated was out of a safety concern and to prevent a possible accident.

Even if the Company had established that Brown was insubordinate by refusing to install a fuel tank on the second chassis on the morning of July 21, I would nonetheless conclude the Company seized upon that to discharge her. During the first week in July, just days before the Brown and Childers July 21 incident, employee Patterson outright refused to perform a specific assignment made by Team Leader Childers. Patterson demanded, as Brown had done, to speak with Production Supervisor Bernhardt. Bernhardt, unlike with Brown, met immediately with Patterson inside the plant and because she was upset met with her for approximately 30 minutes outside the plant, and then told Patterson she did not have to perform the additional job assignment Team Leader Childers had specifically directed that she perform. Patterson was never disciplined in any manner for refusing to perform the additional assignment she was directed to perform. The Company's 2001 discharge of employee David Holland for refusing to perform a work assignment does not compel a different result than I reach herein. First, the managers making the decision to terminate Brown were not involved in the 2001 discharge. Second, the Patterson situation appears to more accurately reflect current Company policy specifically when the employee involved (Patterson) is not the employee (Brown) that sought out the Union for the current union campaign and was its most vocal and visible supporter in the plant.

I find that when the Company suspended Brown on July 22 and then terminated her on July 29, the Company violated Sections 8(a)(3) and (1) of the Act. I shall order the Company to offer Raquel Brown full reinstatement and to make her whole with interest.

Conclusions of Law

1. The Company, Freight Liner Custom Chassis Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW is a labor organization within the meaning of Section 2(5) of the Act.

3. The Company violated Section 8(a)(1) of the Act by promulgating and enforcing an unlawful no-talking rule against pro-Union employees; disparately enforcing its no soliciting /no distributing rule against pro-Union employees, interfering with lawful union hand billing outside its facility; surveillance of its employees' union activity by recording the identity of lawful union hand billing, and interrogating its employees concerning their union activities.

4. The Company violated Section 8(a)(1) and (3) of the Act by suspending employee Raquel Brown on July 22, 2005, and by discharging her on July 29, 2005.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found the Company has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Company having discriminatorily suspended and terminated its employee Raquel Brown, it must offer her immediate reinstatement to her former job or if her former job no longer exists to a substantially equivalent position without prejudice to her seniority or other rights and privileges previously enjoyed and make her whole for any loss of wages and benefits. Back pay shall be computed as prescribed in *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I recommend the Company also be ordered to post, within 14 days after service by Region 11, at its Gaffney, South Carolina, facility copies of an appropriate “Notice to Employees” copies of which are attached hereto as “Appendix” for a period of 60 consecutive days in order that employees may be apprised of their rights under the Act and the Company’s obligation to remedy its unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:⁸

ORDER

The Company, Freightliner Custom Chassis Corporation., its officers, agents successors, and assigns shall:

1. Cease and desist from:

(a) Suspending and/or terminating employees because they engage in concerted protected activities and/or activities on behalf of the Union.

(b) Promulgating and enforcing an unlawful no-talking rule against pro-Union employees, disparately enforcing its no soliciting/no distributing rule against pro-Union employees, interfering with lawful union hand billing outside its facility, surveillance of its employees’ union activity by recording the identity of lawful union hand billing and interrogating its employees concerning their union activities.

(c) In any like or related manner, interfering with, restraining or coercing employees in the exercise of rights guaranteed them by the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

⁸ If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Within 14 days from the Board's Order, offer Raquel Brown reinstatement to her former job or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed and make Raquel Brown whole for any loss of earning and other benefits suffered as a result of the discrimination against her, in the manner set forth in the Remedy section of this decision.

(b) Within 14 days from the Board's Order, remove from its files any reference to the unlawful suspension and termination issued to Raquel Brown, and within 3 days thereafter notify Raquel Brown in writing that this has been done and that her suspension and termination will not be used against her in any way.

(c) Within 14 days after service by the Region, post at its facility in Gaffney, South Carolina copies of the attached notices, marked "Appendix⁹." Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Company's authorized representative, shall be posted by the Company immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Company has gone out of business or closed the facility involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the "Notice to Employees" to all employees employed by the Company at any time since April, 2005.

Dated at Washington, DC, April 11, 2006.

William N. Cates
Associate Chief Judge

⁹ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "**POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD**" shall read "**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.**"

APPENDIX

NOTICE TO EMPLOYEES

5 **Posted by the Order of the**
 National Labor Relations Board
 An Agency of the United States Government

10 The National Labor Relations Board has found that we violated Federal labor law and has
ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

15 Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

20 **WE WILL NOT** suspend and/or terminate employees because they engage in protected
concerted activities and/or activities in support of International Union, United
Automobile, Aerospace & Agricultural Implement Workers of America, UAW, or any
other labor organization.

25 **WE WILL NOT** interrogate our employees concerning their union activities.

WE WILL NOT engage in surveillance of our employees' union activities.

30 **WE WILL NOT** promulgate and/or enforce an unlawful no-talking rule against pro-
Union employees or disparately enforce our no solicitation/no distribution rule against
pro-Union employees, nor interfere with lawful union hand billing outside our facility
entrance.

35 **WE WILL NOT** in any like or related manner, interfere with, restrain, or coerce you in
the in the exercise of your Section 7 rights.

WE WILL, offer Raquel Brown full reinstatement to her former job, or if that job no
longer exists, to a substantially equivalent position, without prejudice to her seniority or
any other rights or privileges previously enjoyed.

40 **WE WILL** make Raquel Brown whole for any loss of earnings and other benefits
resulting from her suspension and termination, less any net interim earnings, plus interest.

45 **WE WILL**, remove from our files any reference to Raquel Brown's unlawful suspension
and termination, and **WE WILL** within 3 days thereafter, notify her in writing that this
has been done and that the suspension and termination will not be used against her in any
way.

**FREIGHTLINER CUSTOM CHASSIS
CORPORATION**

(Employer)

5

Dated: _____

By: _____
(Representative) (Title)

10

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information for the Board's website: www.nlrb.gov.

15

4035 University Parkway, Republic Square, Suite 200, Winston-Salem, NC 27106-3325
(336) 631-5201, Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

20

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL

25

OFFICE'S COMPLIANCE OFFICER, (336) 631-5230